

HEATHER B. SHILTON # 7819
Assistant Attorney General
MARK L. SHURTLEFF # 4666
UTAH ATTORNEY GENERAL
Attorneys for Plaintiff Utah State Engineer
1594 West North Temple
SALT LAKE CITY UT 84116
(801) 538-7227

IN THE FIRST JUDICIAL DISTRICT COURT
IN AND FOR BOX ELDER COUNTY, STATE OF UTAH

ROBERT L. MORGAN,)	PLAINTIFF'S RESPONSE TO
STATE ENGINEER,)	DEFENDANT'S REQUEST FOR
)	ADMISSIONS AND PRODUCTION OF
)	DOCUMENTS
Plaintiff,)	
)	Civil No. 010100466MI
v.)	
)	
DAVE SUNDBERG)	Judge: Clint S. Judkins
)	
Defendant.)	

Plaintiff Robert L. Morgan, State Engineer of Utah ("State Engineer"), through his attorney, Heather B. Shilton, Assistant Attorney General, hereby answers Defendant's first Request for Admissions and Production of Documents as follows:

REQUEST FOR ADMISSIONS

Request No. 1: Admit that LaVerne Thomas Kempton and Mont Campbell have conspired to divert water illegally and deprive other water users of their water.

Answer: Objection. Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence. Plaintiff does not represent Mr. Kempton and Mr. Campbell and is not authorized to answer on their behalf. To the extent that a response to Request No. 1 is required, Plaintiff denies the same.

Request No. 2: Admit LaVerne Thomas Kempton and Mont Campbell have illegally diverted water continuously since 1994.

Answer: Objection. Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence. Plaintiff does not represent Mr. Kempton and Mr. Campbell and is not authorized to answer on their behalf. To the extent that a response to Request No. 2 is required, Plaintiff denies the same.

Request No. 3: Admit that LaVerne Thomas Kempton, Mont Campbell and Steven Scoffield were illegally diverting water far in excess of their rights from May 6, 2001, to May 12, 2001.

Answer: Objection. Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence. Plaintiff does not represent Mr. Kempton, Mr. Campbell, and Steven Scoffield and is not authorized to answer on their behalf. To the extent that a response to Request No. 3 is required, Plaintiff denies the same.

Request No. 4: Admit that LaVerne Thomas Kempton, Mont Campbell and Steven Scoffield were diverting water far in excess of their rights from May 21, 2001, to June 6, 2001.

Answer: Objection. Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence. Plaintiff does not represent Mr. Kempton, Mr. Campbell, and Steven Scoffield and is not authorized to answer on their behalf. To the extent that a response to Request No. 4 is required, Plaintiff denies the same.

Request No. 5: Admit that LaVerne Thomas Kempton is creating false Delivery Reports on his Annual Commissioner's Reports.

Answer: Objection. Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence.

Plaintiff does not represent Mr. Kempton and is not authorized to answer on Mr. Kempton's behalf. To the extent that a response to Request No. 5 is required, the Plaintiff denies the same.

Request No. 6: Admit that there was more than 20 cfs of water in Clear Creek on May 9, 2001.

Answer: Objection. Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence.

Request No. 7: Admit that the State Engineer knows that LaVerne Thomas Kempton's reports are false.

Answer: Denied.

Request No. 8: Admit that the majority of the water reported to

be delivered to the Defendant was not delivered.

Answer: Objection. Defendant's request is overly vague and Plaintiff is unable to formulate a response. Furthermore, Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence. Mr. Kempton, Water Commissioner for the Utah Clear Creek System, delivers the water to the system's water users and submits distribution reports to the Plaintiff. Plaintiff does not represent Mr. Kempton and is not authorized to answer on Mr. Kempton's behalf.

Request No 9: Admit that the State Engineer knows that the Defendant did not receive his water according to the decrees.

Answer: Objection. Defendant's request is overly vague and Plaintiff is unable to formulate a response. Furthermore, Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence.

Request No. 10: Admit that the State Engineer should have corrected the assessment before taking any agency action against

the Defendant.

Answer: Objection. Defendant's request is overly vague and Plaintiff is unable to formulate a response.

Request No. 11: Admit that Defendant lost \$18,000 because the State Engineer ordered that he could not take his decreed water.

Answer: Objection. Defendant's response is overly vague and Plaintiff is unable to formulate a response. Furthermore, Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence.

Request No. 12: Admit that the State Engineer should pay the Defendant for the lost crop.

Answer: Objection. Defendant's response is overly vague and Plaintiff is unable to formulate a response. Furthermore, Defendant's request is irrelevant and unlikely to lead to the discovery of admissible evidence.

Request No. 13: Admit that the State Engineer should pay the

Defendant a reasonable attorney's fee and Court Costs.

Answer: Denied.

Request No. 14: Admit that the Court should appoint another Water Commissioner besides LaVerne Thomas Kempton.

Answer: Denied.

REQUEST FOR PRODUCTION OF DOCUMENTS

Request No. 1: Provide a clear and accurate copy of LaVerne Thomas Kempton's field notes for the years 1998, 1999, 2000, 2001.

Answer: LaVerne Thomas Kempton's field notes are not in the possession, custody, or control of Plaintiff as requested by Defendant's Request No. 1.

Request No. 2: Provide a clear and accurate copy of scrolls from the old USGS gaging station for the years 1999, 2000, 2001.

Answer: The USGS gaging station scrolls are available for inspection by the public. Plaintiff has previously provided

Defendant a copy of the 1999 USGS gaging station scroll.

Plaintiff will agree to produce copies of the scrolls requested in Defendant's Request No. 2 at a scheduled time agreed upon by both parties 24 hours in advance, during the Division of Water Rights' office hours (8:00 a.m. to 5:00 p.m.), at a charge of twenty-five cents (\$.25) a page to Defendant, at the following address:

Division of Water Rights
Northern Regional Office
1780 North Research Parkway, Suite 104
North Logan, Utah 8434
(435) 752-8755

Request No. 3: Provide a clear and accurate copy of the minutes of the Clear Creek Distribution Meetings for the years 1996, 1997, 1998, 1999, 2000, 2001.

Answer: There are no minutes of the Clear Creek Annual Distribution Meetings for the years 1996, 1998, and 1999, in the possession, custody, or control of Plaintiff as requested by Defendant's Request No. 3. In 1997, Plaintiff began taking minutes of the Clear Creek Annual Distribution Meeting. In 1998,

Plaintiff recorded the Clear Creek Annual Distribution Meeting on audio tape and the audio tape was not reduced to minutes. In 1999, Plaintiff attempted to record the meeting on audio tape. After the meeting, Plaintiff discovered that a microphone malfunctioned mechanically and the meeting was not recorded on the audio tape. Plaintiff determined after the microphone's mechanical malfunction to document future meetings by taking minutes. The copies of the Clear Creek Annual Distribution Meeting minutes for the years 1997, 2000, and 2001 are enclosed with Plaintiff's Response.

Request No. 4: Provide a clear and accurate copy of the audio tapes of Clear Creek Distribution Meetings for the years 1996, 1997, 1998, 1999, 2000, 2001.

Answer: There are no audio tapes of the Clear Creek Distribution Meeting for the years 1996, 1997, 1999, 2000, and 2001 in the possession, custody, or control of Plaintiff as requested by Defendant's Request No. 4. Plaintiff did not make an audio tape recording of the meeting until 1998. In 1999, the meeting was

not recorded due to a microphone malfunctioning mechanically. Plaintiff determined after the microphone's mechanical malfunction to make no further attempts at recording the Clear Creek Annual Distribution Meeting by audio tape. A copy of audio tape recording of the Clear Creek Annual Distribution Meeting for the year 1998 is enclosed with Plaintiff's response.

Request No. 5: For any Request for Admissions that were not admitted provide clear and accurate copies of all documents which may be used to support the denial.

Answer: Plaintiff has enclosed the following documents in answer to Defendant's Request No. 5:

1998 Analysis of Water Delivered to Dave Sundberg

1999 Analysis of Water Delivered to Dave Sundberg

2000 Analysis of Water Delivered to Dave Sundberg

DATED this ____ day of September, 2001.

Heather B. Shilton

Assistant Attorney General